

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

NELSON R. LYNCH,)	
)	
Petitioner,)	
vs.)	NO. CIV-05-0150-HE
)	
TIM O'DELL, Warden)	
)	
Respondent.)	

ORDER

Petitioner Nelson R. Lynch, a state inmate appearing pro se, instituted this action under 28 U.S.C. § 2254 seeking habeas relief and, consistent with 28 U.S.C. §636(b)(1)(B), the matter was referred for initial proceedings to Magistrate Judge Robert E. Bacharach. The magistrate judge has issued his Report and Recommendation suggesting that the petition be denied.

The petitioner has filed an objection to the Report and Recommendation.¹ He challenges the magistrate judge's conclusions that application of the preponderance of the evidence standard of proof in a revocation hearing is constitutional; that the state was not collaterally estopped from revoking his suspended sentences;² that the evidence was sufficient to establish that the petitioner possessed cocaine; and that the petitioner procedurally defaulted his claims of ineffective assistance of trial and appellate counsel

¹*The petitioner challenged all the magistrate judge's findings except for his determination that the petitioner's sentence was not excessive.*


²*The magistrate judge concluded the claim was not cognizable in a habeas proceeding because it involved an alleged violation of state law, but that the petitioner could not prevail on it even if the revocation was barred by collateral estoppel.*

premised on his trial counsel's asserted failure to advise the court of his mental defect.³

The magistrate judge carefully considered the grounds of relief alleged by the petitioner and the court agrees with his analysis of them. Having considered the petitioner's objection and given his claims de novo review, the court concurs with Magistrate Judge Bacharach that the petitioner is not entitled to habeas relief and adopts his Report and Recommendation. Accordingly, the petition for a writ of habeas corpus is **DENIED**.

IT IS SO ORDERED.

Dated this 30th day of June, 2005.



JOE HEATON
UNITED STATES DISTRICT JUDGE

³Although there is a reference in the record to the petitioner's mental capacity, *State Court Record, Exhibit 1, Brief of Appellant, p. 8*, it does not relate to the petitioner's ineffective assistance of counsel claims. The petitioner has not shown that the magistrate judge incorrectly determined that he procedurally defaulted his ineffective assistance claims in state court.